

REMARKS

In the present application, claims 1, 2 and 61-104 are pending and stand rejected in the Final Office Action mailed August 31, 2007. In this amendment, claims 1, 2, 65, 75, 79, 87, 90, 98 and 101 are amended, and claims 62-64, 77-78, 88-89, and 99-100 are cancelled. Reconsideration of the present application including claims 1, 2, 61, 65-76, 79-87, 90-98, and 101-104 is respectfully requested.

U.S. Patent No. 5,458,638 to Kuslich et al. and U.S. Patent No. 5,702,451 to Biedermann et al. were cited either alone or in combination with one another or other references in the Final Office Action to reject independent claims 1, 75, 87 and 98. Independent claims 1, 75, 87 and 98 have been amended above and are not disclosed or taught by Kuslich or Biedermann, either alone or in combination with one another or the other cited references. Support for the amendments made herein are found at least in Figures 17-18 and page 29, line 27 to page 30, line 33, for example.

With regard to Kuslich, as shown in Figures 10 and 19, clips 60, 148 are spaced substantially inwardly from the surface of the end cap that extend from the inner surface toward the outer surface. Clips 60, 148 are substantially separated from this surface of the end cap, and clips 60, 148 do not include a first end attached to the inner surface of the occlusion body at any surface that extends from the inner surface toward the outer surface where the surface also contacts an inner surface of the cage around the opening of the cage. Nor would one of ordinary skill in the art have any reason modify Kuslich to re-position clips 60, 148 as recited in the claims since Kuslich provides a cap with the surface that extends from the inner surface toward the outer surface of the cap being located outside the opening of the cage so that the body of the cap covers the outer end surfaces of the cage around the end opening as shown in Figures 12A, 13A and 25 to provide a non-abrasive, inert and slippery end to the cage to oppose the epidural tissue. See col. 7, lines 14-24 and col. 9, lines 27-31, for example. Therefore, it is respectfully submitted that Kuslich, when considered alone or in combination with the other cited references, does not disclose or suggest claims 1, 75, 87 and 98.

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With regard to Biedermann et al., it discloses noses 15 engage the V-shaped recesses 9, 10 in the ends 7, 8 of jacket 1, and Biedermann teaches an edge 20 with an outer contour that corresponds to the inner contour of the jacket. Since prongs 21, 21' lie within the contour defined by edge 20, and edge 20 fits within and moves along the inner contour of jacket 1 to allow noses 15 to be positioned in recesses 9, 10, prongs 20, 21' also would fit within and move along the inner contour of jacket 1. However, there is no disclosure in Biedermann that prongs 21, 21' are resiliently deflectable relative to ring 12 or are capable of engaging jacket 1 at a location spaced from the end opening since, if prongs 20, 21' engaged the jacket when positioned in the jacket, noses 15 would not be seated in the end recesses of jacket 1. Furthermore, one skilled in the art would have no reason to modify prongs 21, 21' to be resiliently deflectable relative to ring 12 or to contact or engage the jacket to frictionally secure the two structures to each other since Biedermann teaches that the cap is positioned to extend away from the end of jacket 1 so that prongs 21, 21' provide structural support for the spinal column and contact the adjacent vertebral endplate. Resiliently deflectable prongs 21, 21' would result in undesired movement of the vertebrae during fusion and potentially injure the patient. Furthermore, since the resulting vertebral load compresses noses 15 into the recesses 9, 10 so that noses 15 secure the cap to jacket 1, and there is no reason to modify prongs 21, 21' to engage jacket 1. Therefore, it is respectfully submitted that Biedermann, either alone or in combination with the other references, does not disclose or suggest the features of independent claims 1, 75, 87 and 98.

Dependent claims 2, 79, 90 and 101 recite a flange in communication with and connected with the outer wall projecting around the engaging surface of the occlusion body. Kuslich does not disclose any flange or any other structure in communication with and connected to the outer surface of the cap that projects around the surface that engages the inner surface of the cage. Biedermann discloses noses 15 projecting from ring 12, but does not disclose or teach any flange in communication with and connected with an outer surface of ring 12 that also projects around any surface of ring 12 that engages an inner surface of jacket 1. Therefore, dependent claims 2, 79, 90 and 101 are not taught or suggested by the cited references and are allowable.

The remaining claims depend directly or indirectly from base claims 1, 75, 87 and 98 and are allowable at least for the reason the base claim from which each depends is allowable and for reasons provided in previous responses.

Reconsideration and allowance of the present application including claims 1, 2, 61, 65-76, 79-87, 90-98, and 101-104 is hereby respectfully solicited. The Examiner is welcome to contact the undersigned to resolve any outstanding issue with regard to the present application.

Respectfully submitted

By: 

Douglas A. Collier
Reg. No. 43,556
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204-2079
(317) 238-6333

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